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CRIMINAL LAW—JUDICIAL NOTICE—INTOXICANTS.—*CRIFE v. STATE*, 62 S. E. 567 (GA.).—*Held*, that the courts may take judicial notice of the fact that lager beer is an intoxicating malt liquor.

In most jurisdictions to-day, lager beer is judicially noticed as an intoxicating liquor. *Bandalow v. People*, 90 Ill. 218; *Adler v. State*, 55 Ala. 16. It has been expressly made so by statute in some states, where previously the courts only took judicial notice of the fact that spirituous liquors were intoxicating. *Commonwealth v. Bubser*, 14 Gray 83; *Shaw v. State*, 56 Ind. 173. The term "beer," without qualification, is by the weight of authority insufficient to enable the courts to notice it judicially as intoxicating. *Hansberg v. People*, 120 Ill. 21; *U. S. v. Ducournau*, 54 Fed. 138. Although in some jurisdictions the word alone is sufficient. *Maier v. State*, 2 Tex. Civ. App. 296; *Kerkow v. Bauer*, 15 Neb. 150. The Court of Appeals of New York, however, has laid down the rule that "beer" is not judicially known to be intoxicating. *Blatz v. Rohrbach*, 116 N. Y. 450; *People v. Hart*, 24 How. Pr. 289.

CUSTOM AND USAGES—CONTRACTS.—*POSTAL TELEGRAPH COMPANY v. WILLIS*, 47 So. 380 (MISS.).—Where a firm had delivered to a telegraph company a telegram accepting plaintiff's offer to sell cotton, it was *held*, that plaintiff, who had allowed the firm to retract their acceptance by telephone while the telegram lay undelivered in the company's office, could not show, to establish liability of the telegraph company for negligent delay in delivery, a custom in the cotton business whereby a telegraphic acceptance of an offer does not become binding until actually delivered to the addressee.

Instances often occur in which a contract may be explained and controlled by a custom prevailing among men engaged in a certain line of business. *Cothran v. Ellis*, 107 Ill. 413. But no person can be recognized in this country, the effect of which is to supercede a settled rule of commercial law. *Frith v. Barker*, 2 Johns 327; *Cove v. Heisley*, 19 Pa. St. 243. *Contra: Adams v. Norris*, 64 U. S. 353. Nor can custom be shown to establish a liability on a fixed state of facts, or to show the origin of the relations by which the parties became responsible to each other. *Ulmer v. Farnsworth*, 80 Me. 500; *Bowe v. Hyland*, 44 Minn. 88. Usage is a mere incident to a contract and is immaterial where no contract is shown as already existing. *Moore v. Eason*, 11 Fed. 568; *Fitley v. Chicago*, 103 U. S. 155.

DAMAGES—BREACH OF CONTRACT—LOSS OF PROFITS.—*EAGAN v. BROWN*, 112 N. Y. SUPP. 690.—Where defendant leased a floor in a building provided with steam power to the plaintiff, and afterwards cut off the steam power, thereby destroying the plaintiff's business, *held*, that plaintiff could recover damages for loss of future profits. *Hooker, J., dissenting.*

Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach should be such as may fairly and reasonably be considered as either arising naturally; *i. e.*, according to the usual course of things from such breach of contract itself; or such as may reasonably be sup-

posed to have been in the contemplation of both parties at the same time they made the contract as the probable result of the breach of it. *Hadley v. Baxendale*, 9 Exch. 341; *Stilwell v. B. Mfg. Co.*, 139 U. S. 147. Thus, it is held that a carrier cannot be liable for loss of profits to a plaintiff due to the failure or delay of the carrier to deliver, *Thomas v. Wabash, St. L. & P. Ry. Co.*, 62 Wis. 642, unless the carrier had notice of the special use. *Brock v. Gale*, 14 Fla. 523. Although the authorities in both England and the United States are thoroughly agreed upon the principle laid down in *Hadley v. Baxendale*, *supra*, they differ greatly in the application of it. *Stilwell v. B. Mfg. Co.*, 139 U. S. 147. Thus, where there is a breach of contract to repair by the lessor, it is held by some authorities that there can be no recovery for loss of profits. *Winne v. Kelley*, 34 Iowa 339; *Rogers v. Bemus*, 69 Pa. St. 432. *Contra*: *Stewart v. Lanier House Co.*, 75 Ga. 582. But in all cases where a recovery for loss is sought, the amount must not be merely possible or even probable, but must be proved with a reasonable degree of certainty. *Pollock v. Gantt*, 69 Ala. 373; *White v. Miller*, 71 N. Y. 118.

DEAD BODIES—CIVIL LIABILITIES.—*RUSHING v. MEDICAL COLLEGE OF GEORGIA*, 62 S. E. 563.—*Held*, a husband is entitled to the dead body of his wife for burial, and in the condition in which death leaves it; but a slight incision by the attendant surgeon in a hospital to ascertain the cause of death, authorized by the board of health of the city in which the hospital is located, and in obedience to the requirements of a city ordinance, in order that a certificate of burial may be obtained not otherwise obtainable, where there is no cutting or removal of any limb or organ, and the incision is properly closed and not visible when the body is clothed, does not infringe this right.

At common law, no property right existed in a dead body. 2 *Bl. Com.*, 429. But the right to bury and protect a corpse is a legal right which courts protect. *In re Widenning Beekman St.*, 4 Bradf. Rep. 503. And there is a *quasi* property right or interest in a dead body of a human being, so as to sustain a civil action for its wilful or negligent mutilation. *Wynkoop v. Wynkoop*, 42 Pa. 293. But the mutilation must be done unlawfully. *Larson v. Chase*, 47 Minn. 307. And not for purpose of discovering the cause of death in a careful manner. *Foley v. Phelps*, 1 App. Div. 551.

EVIDENCE—HUSBAND AND WIFE—CONFIDENTIAL COMMUNICATIONS.—*COMMONWEALTH v. FISHER*, 70 ATL. 865 (PA.).—*Held*, that where a prisoner charged with murder dictates letters to his wife, which are delivered by her to the district attorney, such letters are inadmissible, as permitting the wife to testify against her husband. Mitchell, C. J., and Potter, J., *dissenting*.

This question has not been uniformly treated by the courts. Many decisions hold, with the principal case, that if the husband's letters are delivered by the wife herself to a third person, they remain privileged communications. *Selden v. State*, 74 Wis. 271; *Wilkerson v. State*, 91 Ga. 729. Some courts have even held that such letters are inadmissible against the husband no matter how they were obtained, as the privilege attaches